

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7351

Emergency Petition of Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Cable, for a Conditional Certificate of Public Good to serve a portion of the Town of Bolton))	Hearing at Montpelier, Vermont October 30, 2007
---	---	---	---

Order entered: 11/2/2007

PRESENT: John P. Bentley, Esq., Hearing Officer
James P. Volz, Esq., Chairman and Hearing Officer, Docket No. 7350 ¹

APPEARANCES: John J. Cotter, Esq., Special Counsel
for Vermont Department of Public Service

Paul J. Phillips, Esq.
Joslyn L. Wilschek, Esq.
Primmer Piper Eggleston & Cramer, PC
for Waitsfield-Fayston Telephone Company, Inc.
d/b/a Waitsfield Cable

M. Peter Siegel, d/b/a North Valley Cable Systems
Pro se

Brian Drinkwater, Black Bear Inn
Pro se

I. INTRODUCTION

This case involves an Emergency Petition, filed October 26, 2007, by Waitsfield-Fayston Telephone Company, Inc., d/b/a Waitsfield Cable ("Waitsfield Cable" or the "Petitioner"), requesting an emergency certificate of public good that authorizes Waitsfield Cable to provide cable television service in an area along the upper portion of the Bolton Valley Access Road in Bolton, Vermont. In its Emergency Petition, Waitsfield Cable asserts that the proposed service

1. A hearing in Docket 7350 was held concurrently with the hearing in the present proceeding.

area has been without cable television service since a service outage on March 20, 2007, and that the current service provider, M. Peter Siegel, d/b/a North Valley Cable Systems ("North Valley"), has declined requests to restore service. Waitsfield Cable requests emergency authority, including such waivers as may be required, to provide cable television service to the affected subscribers on or before December 7, 2007, the date on which the largest affected subscriber, the Bolton Valley Resort, is scheduled to open its winter ski season. As a condition of its Emergency Petition, Waitsfield Cable proposes that it will complete and submit to the Public Service Board ("Board"), on or before December 17, 2007, and in the form required by Board Rule 8.000, an "Application for a Certificate of Public Good for the Operation of a CATV System" to serve the Town of Bolton (the "Application"), and further proposes that any emergency relief granted to Waitsfield Cable in this proceeding will expire when a final adjudication of the merits of the Application shall take effect.

Copies of the Emergency Petition were served upon the Department of Public Service (the "Department" or "DPS"), North Valley, the Town of Bolton, the Chair of the Bolton Selectboard, the Bolton Valley Resort, the Black Bear Inn, the Redstone Commercial Group and the Bolton Valley Presidents Council.

Notice of a Prehearing Conference was sent by the Board on October 29, 2007. The prehearing conference was held on October 30, 2007, at 3:00 p.m. at the Public Service Board Hearing Room, Third Floor, Chittenden Bank Building, 112 State Street, Montpelier, Vermont. Mr. Christopher Campbell, Director for Telecommunications at the Department, attended with counsel and other staff. Mr. Gregg Haskin, President and Chief Executive Officer of Waitsfield Cable, attended with counsel. Mr. Peter Siegel, owner and operator of North Valley, appeared *pro so*, as did Mr. Brian Drinkwater, Proprietor of the Black Bear Inn.

At the Prehearing Conference Mr. Siegel stated that North Valley consents to the Board granting the requested emergency certificate of public good to Waitsfield Cable.

With Mr. Siegel's assent and without objection from any party, the Hearing Officer heard testimony from Mr. Haskin in support of the Waitsfield Cable Emergency Petition.

II. FINDINGS

Based on substantial evidence of record and the testimony presented at the hearing, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

1. The Petitioner is a corporation duly organized in the State of Vermont, with a principal place of business in Waitsfield, Vermont. The Petitioner is a wholly-owned subsidiary of Selectronics Corporation. Emergency Petition at ¶¶6, 8.

2. The Petitioner has provided local telephone service to customers in its service territory since its original incorporation in 1904. The proposed cable television service area requested in the Emergency Petition is part of the Petitioner's present local telephone service area and the Petitioner already owns and operates utility distribution facilities in the requested cable television service area. Emergency Petition at ¶7; Haskin Testimony.

3. The Petitioner, doing business as Waitsfield Cable, received a Certificate of Public Good, pursuant to 30 V.S.A. § 231, from the Board by Order issued on May 3, 1982, in Docket No. 4589. The Petitioner presently offers cable television services to 3,331 subscribers in the Towns of Waitsfield, Warren, Fayston, Moretown, and a portion of Duxbury, all in Washington County, Vermont. Emergency Petition at ¶¶11–13.

4. The requested cable television service area consists of the upper portion of the Bolton Valley Access Road in Bolton, Vermont. Emergency Petition at ¶¶14–15; exh. ECPG-1 attached thereto; Haskin Testimony.

5. The requested cable television service area is part of the service territory for which North Valley is authorized to serve under a Certificate of Public Good, pursuant to 30 V.S.A. § 504, issued by the Board on May 1, 1986, in Docket No. 5083. Emergency Petition at ¶¶19–21.

6. The present cable television subscribers in the requested service area have been without cable television service since March 20, 2007, as a result of a service outage that continues to the present day. North Valley has declined requests from subscribers to restore cable television service to the requested service area. Emergency Petition at ¶¶25–27.

7. Business subscribers in the requested service area have lost business as a result of the cable television service outage and will continue to lose business until service is restored. Emergency Petition at ¶33.

8. Complaints from a North Valley customer and from the Department concerning the prolonged service outage and related matters are presently pending before the Board in Docket No. 7350. Emergency Petition at ¶¶34–36.

9. Petitioner proposes to restore cable television service to the requested service area on or before December 7, 2007, and has the present ability to meet this objective through its existing utility distribution plant. Emergency Petition at ¶¶38, 40; Haskin Testimony.

10. Petitioner has committed to providing cable television service in the requested service area in conformity with the system-construction and signal-carriage requirements set forth in Board Rules 8.360 and 8.370. Emergency Petition at ¶39.

11. Any emergency authority granted by the Board will last only until the Board has reached a final determination of the merits of a full application for a certificate of public good to serve the Town of Bolton, which Petitioner will submit on or before December 17, 2007. Emergency Petition at ¶3; Haskin Testimony.

III. CONCLUSION

Based upon the foregoing findings of fact, I conclude and recommend that the Public Service Board find that granting a conditional certificate of public good, on an emergency basis, to Waitsfield Cable in this matter is appropriate, that good cause for such emergency relief exists because of the prolonged service outage and the continuing economic harm that will result unless cable television service is quickly restored, and that granting the requested emergency relief will promote the general good of the state, particularly since any emergency relief so granted will last only until the Board has had an opportunity to conduct a full review, if necessary and appropriate, under 30 V.S.A. §§ 503 and 504, of a complete application for a certificate of public good to be submitted by the Petitioner. I further recommend, for purposes of carrying out the objectives of the emergency relief, that, pursuant to Board Rule 1.200, the Board grant Waitsfield Cable's request for waivers of the following Board Rules concerning petitions for CATV authority: Rules 8.211 (governing the form and content of petitions); Rule 8.212 (governing service of petitions); Rule 8.213 (governing hearings); and Rule 8.214 (establishing criteria for approval of petitions).

Because this Proposal for Decision is not adverse to any party, it has not been served upon the parties in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 2nd day of November, 2007.

s/John P. Bentley
John P. Bentley, Esq.
Hearing Officer

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings and Conclusions of the Hearing Officer are adopted.
2. Pursuant to Board Rule 1.200, waivers of the following Board Rules are granted to Waitsfield Cable for purposes of carrying out the objectives of the emergency relief granted herein: Board Rule 8.210 (governing the form and content of petitions); Rule 8.212 (governing service of petitions); Rule 8.213 (governing hearings); and Rule 8.214 (establishing criteria for approval of petitions).
3. A conditional certificate of public good shall be issued on an emergency basis to authorize Waitsfield Cable to provide cable television service in the requested service area along the upper portion of the Bolton Valley Access Road in the Town of Bolton, Vermont.
4. On or before December 17, 2007, Waitsfield Cable shall file a completed "Application for a Certificate of Public Good for the Operation of a CATV System," in the form required by Board Rule 8.000 and in accordance with applicable Board Rules governing such applications, in which Waitsfield Cable shall request authority to provide cable television service in a service area comprising the entire Town of Bolton (the "Full Application").
5. The authority granted herein shall terminate automatically upon the Board's reaching a final determination of the merits of the Full Application.

Dated at Montpelier, Vermont, this 2nd day of November, 2007.

s/James Volz)

) PUBLIC SERVICE

s/David C. Coen)

) BOARD

s/John D. Burke)

) OF VERMONT

OFFICE OF THE CLERK

FILED: November 2, 2007

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.